



SAN FRANCISCO DISTRICT  
**PUBLIC NOTICE**

Regulatory Branch  
333 Market Street  
San Francisco, CA 94105-2197

NUMBER: 29120S      DATE: November 8, 2004  
RESPONSE REQUIRED BY: December 8, 2004

PERMIT MANAGER: Tyson S. Eckerle

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**1. INTRODUCTION:** The Alameda County Public Works Agency (ACPWA), 951 Turner Court, Hayward, California 94545, through its agent, Anchor Environmental, LLC, 2101 Webster Street, 12th Floor Oakland, CA 94612, has applied for a U.S. Army Corps of Engineers (Corps) permit to de-silt Zone No. 6 Line N and Line N-1 flood control channels, in the City of Fremont, Alameda County, California. This application is being processed pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).

**2. PROPOSED PROJECT:**

**Project Site:** The Zone No. 6 Line N and N-1 Channels are tidally influenced channels that connect to the San Francisco Bay via Mowry Slough (Please refer to Figure 1). The channels are bordered by Stevenson Blvd. to the northwest, Boyce Road to the northeast, and Automall Parkway to the southeast (in the City of Fremont). Sediment deposits have altered the shape and flow capacity of the channels and have created vegetated shelves within the length of the flood control channel. The project contains approximately 10,824 linear feet (8.3 acres) of jurisdictional waters of the U.S.

**Project Description:** The applicant plans

to remove approximately 25,000 cubic yards of sediment from the system in order to return the flood control channels to original design capacity. The sediment would be removed using a standard track-mounted excavator equipped with a 1-cubic-yard-bucket. The excavator would access the site on existing gravel roadways adjacent to the flood control channel. The applicant proposes to install two temporary bridges across the channels to facilitate continuous traffic flow along the one-lane gravel levee roads. Collected material would be trucked approximately 2.5 miles to an 8.2-acre disposal site located at Cushing Parkway and Fremont Boulevard.

This site is expected to accommodate the entire 25,000 cubic yards of dredged material if the material is stockpiled to a depth of approximately 2 feet. In the event the entire 8.2 acres is not available for use, the material will be stockpiled to a height of 4 feet until the ACPWA identifies a use for the material.

**Purpose and Need:** The overall purpose of this project is to restore the system's flood control capacity to the originally designed specifications; increase system stability; reduce future maintenance costs; enhance public health, safety, and welfare; and enhance protection of public and private property. The basic purpose of the project is flood protection, and the need is based

on the current altered dimensions of the two flood control channels, which reduces their effectiveness during floods. The attached cross sectional drawings illustrate the current status of the channels in three locations (Fig. 2).

**Impact:** The project will result in the removal of 25,000 cubic yards (cy) of sediment from approximately 8.3 acres (10,824 linear feet) of Corps jurisdictional waters and wetlands.

**Mitigation:** The applicant has proposed measures to minimize the impact of this action. Wildlife surveys would be conducted by a certified biologist prior to any construction activity, and if any species of concern were found, appropriate time and space buffers would be allotted before proceeding with construction.

In addition to the wildlife surveys, the applicant has offered suggestions about how to compensate for removing approximately 1.5 acres of potential salt marsh harvest mouse (SMHM) habitat. This habitat would be removed by hand to allow any SMHM to escape, and fences would be erected to prevent any SMHM from entering the site during construction.

Potential mitigation measures for removing this vegetation include providing a funding contribution to the San Francisco Bay National Wildlife Refuge; funding the removal of local exotic vegetation; or funding other SMHM habitat or population enhancement programs.

### **3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

**National Environmental Policy Act of 1969 (NEPA):** The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. Section 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 C.F.R. Part 1500-1508, and Corps' Regulations, 33 C.F.R. Part 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

**Endangered Species Act of 1973 (ESA):** Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Currently, the SMHM mouse (*Reithrodontomys raviventris*) is the only listed species identified that may be impacted by the proposed project.

**Magnuson-Stevens Fisheries Conservation and Management Act:** NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. No EFH concerns are associated with this proposal.

**Clean Water Act of 1972 (CWA):** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant is notified by this Public Notice that, unless he provides the Corps with evidence of a valid request for State water quality certification to the San Francisco Bay Water Quality Control Board Regional Water Quality Board within 30 days of the date of this Public Notice, the Corps may consider this application withdrawn. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612; by the close of the comment period of this Public Notice.

**Coastal Zone Management Act of 1972 (CZMA):** Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State has concurred with the applicant's

certification. Coastal development issues should be directed to the San Francisco Bay Conservation and Development Commission (BCDC), 50 California Street, Suite 2600, San Francisco, California 94111.

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of the project data, and the fact that this action would return an existing project to its original design capacity (i.e., no "new" digging would take place), the Corps does not suspect that historic or archeological resources occur within the project footprint. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

4. **PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation, economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation,

water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

**5. CONSIDERATION OF COMMENTS:**

The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

**6. SUBMISSION OF COMMENTS:**

Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such

comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Tyson S. Eckerle of our office at telephone 415-977-8462 or E-mail: Tyson.S.Eckerle@usace.army.mil. Details on any changes of a minor nature which are made in the final permit action will be provided upon request.